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**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA**

C.M., on her own behalf and on behalf of her minor child, B.M.; et al.

No. 2:19-cv-05217-SRB

### **Plaintiffs,**

V.

**United States of America,**

Defendant.

**REPLY IN SUPPORT OF  
PLAINTIFFS' SUPPLEMENT  
TO MOTION FOR  
SANCTIONS**

A.P.F. on his own behalf and on behalf of his minor child, O.B.; et al.

No. 2:20-cv-00065-SRB

**Plaintiffs,**

V.

United States of America,

**Defendant.**

1       Defendant argues that the late production of Mr. Lloyd’s notes did not harm Plaintiffs  
 2 because the government was not required to produce them until Plaintiffs served an RFP  
 3 seeking the notes in July 2022. Opp. at 3–4. Defendant is incorrect.

4       During a discovery meet and confer on October 23, 2020, Defendant confirmed that  
 5 “in addition to emails and non-email ESI, relevant hard copy documents are being collected  
 6 from the identified custodians and produced.” Ex. A, at 2. During that same meet and  
 7 confer, the parties agreed that “Plaintiffs will propose search terms, custodians, and [a] date  
 8 range for a supplemental HHS search and production.” *Id.* The parties subsequently agreed  
 9 to additional HHS custodians, including Mr. Lloyd. *See* Supplement at 1–2 n.2. The  
 10 government produced Mr. Lloyd’s ESI documents as part of MIDP.

11      During fact discovery, Defendant took the position that “once the Government has  
 12 completed an initial production under MIDP, its obligation to produce documents is  
 13 complete.” Ex. A, at 2. “[T]o the extent that Plaintiffs s[ought] additional documents (even  
 14 if such documents are relevant to the parties’ claims and defenses) or identifi[ed] documents  
 15 missing from the MIDP production,” Defendant asserted that “Plaintiffs are required to serve  
 16 RFPs to request such documents.” *Id.* Plaintiffs “disagreed and explained that the  
 17 Government’s obligations under MIDP were ongoing.” *Id.*

18      Plaintiffs issued the RFP at issue after Tricia Swartz, the former Associate Deputy  
 19 Director of the Office of Refugee Resettlement (“ORR”) testified on May 24, 2022 that she  
 20 took handwritten notes during meetings. *See* Ex. B, Swartz 5/24/2022 Dep. Tr. at 15:9–22.  
 21 Since Plaintiffs did not have those notes, Plaintiffs issued an RFP “seeking handwritten  
 22 notes from former and current HHS employees ‘whose ESI documents were produced in  
 23 this matter’ (which included Mr. Lloyd).” Opp. at 3–4. The fact that Plaintiffs believed it  
 24 would be more efficient to serve an RFP to obtain the notes rather than raise a MIDP dispute  
 25 with the Court at that time does not negate the fact that the notes should have been produced  
 26 two years earlier during the MIDP process. Nor can Defendant now assert that, by serving  
 27 RFPs, Plaintiffs agreed that Defendant was not obligated to produce relevant documents via  
 28 MIDP.

1 Notably, Defendant did not produce Mr. Lloyd's notes in response to MIDP or in  
2 response to the RFP. Instead, Defendant produced the notes in February 2023, well after  
3 the end of fact discovery. *See* Opp. at 2. While Defendant contends that the notes were  
4 recently found in a "folder marked for a non-relevant subject matter," *id.*, the late production  
5 of Mr. Lloyd's notes is not an isolated incident, but is rather the most recent of a series of  
6 late productions that have prejudiced Plaintiffs.

7 For the foregoing reasons, Plaintiffs respectfully request that the Court grant  
8 Plaintiffs' request for relief as stated in Plaintiffs' Motion for Sanctions (C.M. Dkt. No. 333;  
9 A.P.F. Dkt. No. 328) and Supplement to Plaintiffs' Motion for Sanctions (C.M. Dkt. No.  
10 367; A.P.F. Dkt. No. 359).

11  
12 RESPECTFULLY SUBMITTED this 24th day of March, 2023.

13  
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